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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,419	09/08/2003	Diana L. Parker	022698-0084	9029
21125 7590 12/01/2008 NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER				
LEVY, NEIL S				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
12/01/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet@nutter.com

### Office Action Summary

**Application No.**

10/657,419

**Applicant(s)**

PARKER, DIANA L.

**Examiner**

NEIL LEVY

**Art Unit**

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-36 and 38-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-36 and 38-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 28-35,38-44 are rejected under 35 U.S.C. 102e) as being anticipated by SEDUN et al 6972273.

Metal & HEDP chelates (col. L2, lines 46-line 42, col. 3) @ instant % (col. 4, lines 30-36) are combined with fertilizers (col. 5, lines 10-20) and food sources effective as baits- amino acids & carboxylic acids, fatty acids & urea (col. 5, lines 46 -48). Ph adjusters include citric acid(col. 6, top) @ 0.1-5%. Gycols also are used (col. 6, line 26-30). Solid baits are seen as the dry concentrate @ col. 6, line 16,17.

SEDUN also provides dry compositions (summary, column 6, lines 16, 17) as one mode. This meets applicant's composition, since no patentable weight is given to future intended use as bait. See column 5, lines 6-14 and 45-48; column 6, lines 2, 3, 16, and 17; and fertilizers and amino acids. Other examples of ingredients present in SEDUN that can be seen as applicant's claimed dry food source effective as a bait.

#### ***Claim Rejections - 35 USC § 103***

Claim28-36, 38-44 rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2368284 in view of SEDUN et al 6972273

GB teaches EDTA and metal complexes of EDTA chelating agents as solid mollusc baits (page 3, summary). Carrier include the instant claim 36 seeds, wheat (page 6, top; page 7, bottom; page 4, lines 7-9) and other food stuffs and phagostimulants, preservatives, and taste modifiers (page 6, lines 17-19). Included are sugars, yeast, dairy products as casein and malt as beer products (page 6, lines 26-28). The baits are in dry form: powder (page 7, line 16).

The word "dry" is absent, but the ingredients are those of the instant "dry" bait.

EDTA is the only chelator. SEDUN has the instant phosphoric acid chelators-HEDP and ATMP and phosphoric acid (column 3, lines 17, 31, 32, 41, and 60.)

The chelators are shown as equivalent to EDTA.

Metal & HEDP chelates (col. L2, lines 46-line 42, col. 3) @ instant % (col. 4, lines 30-36) are combined with fertilizers (col. 5, lines 10-20) and food sources effective as baits- amino acids & carboxylic acids, fatty acids & urea (col. 5, lines 46 -48). Ph adjusters include citric acid(col. 6, top) @ 0.1-5%. Gycols also are used (col. 6, line 26-30). Solid baits are seen as the dry concentrate @ col. 6, line 16,17.

SEDUN has the same dry components as the applicant. At claim 36; carrier of gelatin, fish by-products, and at claim 35, fatty acids and salts thereof, carboxylic acids and salts thereof; and claim 40-citric acid and applicant claims these as dry food components, but fails to disclose moisture content, if any.

SEDUN also provides dry compositions (summary, column 6, lines 16, 17) as one mode. This meets applicant's composition, since no patentable weight is given to future intended use as bait. See column 5, lines 6-14 and 45-48; column 6, lines 2, 3, 16, and 17; and fertilizers and amino acids. Other examples of ingredients present in SEDUN that can be seen as applicant's claimed dry food source effective as a bait.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use any of art recognized means, as of the GB granules modified as desired to increase stability, dispersibility, compatability of ingredients, processing ease, & toxicity .

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed,

and the use of ingredient for the functionality for which they are known to be used is not basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve improved control as is well known in the art.

One would be able to substitute any of the SEDUN chelators for the GB EDTA, in order to advantageously control both the herbicides of SEDUN and mollusc of GB. Combinations are also permitted. The testing to identify the optimum effective chelator is obvious for the artisan to accomplish, with expectation of success, since the number of chelators is limited.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **NEIL LEVY** whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615

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